

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant,

Albert Bertalmio, as Trustee for the Albert Bertalmio Trust

and

95-02812

Name of Respondents

Bear, Stearns & Co., Inc.;

Peter Babilla.

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### **REPRESENTATION OF PARTIES**

For Claimant: Claimant Albert Bertalmio, as Trustee for the Albert Bertalmio Trust ("Bertalmio"), was represented by Stuart D. Perlman, Esq. of Perlman & Hovitz in Chicago, Illinois.

For Respondent: Respondents Bear, Stearns & Co. Inc. ("Bear Stearns") and Peter Babilla ("Babilla") were represented by Nicholas P. Iavarone, Esq. of Bellows & Bellows in Chicago, Illinois.

### **CASE INFORMATION**

Statement of Claim filed: July 12, 1995.

Claimant's Submission Agreement signed on: July 28, 1995 by Albert Bertalmio, as Trustee for the Albert Bertalmio Trust.

Statement of Answer filed on: August 31, 1995.

Respondent Bear Stearns & Co. Inc.'s Submission Agreement was signed on August 31, 1995 by Jeffrey Lippman.

Respondent Peter Babilla's Submission Agreement was signed on July 17, 1995.

### **HEARING INFORMATION**

Pre-hearing conference: None Held.

Hearing Date/Sessions: January 13, 1997 for Two (2) Sessions.

Hearing location: Chicago, Illinois

**CASE SUMMARY**

Bertalmio alleged that Respondents misrepresented investment risks causing Bertalmio to lose \$10,510.63 in lost profits. Bertalmio specifically alleged that:

1. Babilla, a sales agent at Bear, Stearns Inc., acted as Bertalmio's broker in purchasing corporate bonds;
2. Babilla represented himself as knowledgeable and capable of locating high-yield, low-risk corporate bonds;
3. On April 14, 1994 and August 18, 1994, Babilla recommended that Bertalmio purchase Grand Union Senior Notes. Relying on Babilla's knowledge and expertise, Bertalmio purchased a total of 55,000 Grand Union Notes;
4. On December 1, 1994 Babilla telephoned Bertalmio and recommended that Bertalmio sell his Grand Union holdings based on an announcement by Grand Union Holding Corp.. Without conducting any of his own research and relying on Babilla's recommendations, Bertalmio sold his entire Grand Union holding; and
5. Grand Union Notes have subsequently increased in value causing Bertalmio to lose \$10,510.63 in lost profits.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that:

1. Mr. Bertalmio is a sophisticated and experienced investor;
2. Babilla never recommended any investment purchase to Bertalmio. Bear, Stearns Inc. does not recommend nor agree with purchasing corporate bonds rated less than investment grade, such as Grand Union Senior Notes;
3. Bertalmio independently researched Grand Union Notes. Neither Babilla nor anyone else at Bear, Stearns Inc. ever exercised any discretionary trading over Bertalmio's account;
4. In November of 1994 Babilla telephoned Bertalmio to inform him that Grand Union Holding Company had announced a restructuring and possible inability to pay outstanding debts. Bertalmio questioned the Grand Union Notes trader regarding the

trading activities of other Grand Union customers. The trader informed Bertalmio that other holders were selling;

5. Based on this information and without any recommendation by Babilla or anyone at Bear, Stearns Inc., Bertalmio sold his entire Grand Union holding; and

6. Respondents should prevail in this matter based on the affirmative defenses of failure to state a claim, failure to mitigate damages, ratification, estoppel, waiver, assumption of risk and good faith compliance with industry standards.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$10,510.63, plus interest, attorneys' fees, punitive damages as the arbitrators deemed appropriate, and costs.

Respondents denied the claims asserted against them and asked the panel to award them costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

On May 28, 1996 Respondents filed a Motion to Bar pursuant to Section 10321(c) of the Code of Arbitration Procedure. On May 29, 1996 Claimant filed an Objection to the Motion to Bar. On May 30, 1996, Respondents filed a reply to the Objection. After review of the papers filed, the Arbitrator denied the Motion on May 31, 1996, but stated that the Motion would be reconsidered when the evidence and/or testimony was offered at hearing.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original remains on file with NASD Regulation, Inc. Office of Dispute Resolution.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety;

2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;
3. Any relief not specifically awarded is hereby denied.

### **FORUM FEES**

Forum fees are calculated at the rate of \$ 300.00 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$ 300.00 = \$600.00 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$100.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$300.00 previously deposited with NASD Regulation, Inc., Office of Dispute Resolution by the Claimant.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, Respondent Bear Stearns & Co. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the non-refundable member surcharge in the amount of \$200.00. In addition, Respondent Bear Stearns & Co., Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$300.00 in forum fees.

Dated:

/s/ Stephen C. Esposito  
Stephen C. Esposito  
Public Arbitrator, Presiding Chair

February 25, 1997